IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

MARIO ATENCIO et al.,

Plaintiffs-Petitioners,

v. **No. S-1-SC-40980**

STATE OF NEW MEXICO et al.,

Defendants-Respondents,

and

INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO, and NEW MEXICO CHAMBER OF COMMERCE,

Intervenors/Defendants-Respondents.

MOTION OF THE AMERICAN CIVIL LIBERTIES UNION OF NEW MEXICO, THE AMERICAN CIVIL LIBERTIES UNION, AND THE BRENNAN CENTER FOR JUSTICE FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*

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Proposed *amici curiae* the American Civil Liberties Union of New Mexico, the national ACLU, and the Brennan Center for Justice at NYU School of Law respectfully move under Rule 12-320(A) NMRA for leave to file their conditionally filed *amici curiae* brief.[1] In support of this motion, *amici* state as follows:

1. *Amici* are nonprofit organizations that work to advance state constitutionalism, including the independent interpretation of state constitutions by state courts.

2. *Amici* have a well-established interest in developing state constitutional law. In their brief, *amici* are pursuing that interest here by tendering a brief that encourages this Court to replace the interstitial approach with a holistic, independent approach to state constitutional interpretation that will "ensure the people of New Mexico the protections promised by their constitution." *Grisham v. Van Soelen*, 2023-NMSC-027, ¶ 19 n.7, 539 P.3d 272.

3. *Amici* also submit this brief to encourage the Court to interpret provisions of the New Mexico Constitution in light of their relationships to one another and independently from federal constitutional jurisprudence, and to hold

[1] This brief does not purport to convey the position of New York University School of Law.

that the state constitutional rights asserted in this case are justiciable and mutually reinforcing.

4. *Amici* notified the parties by email on January 15, 2026, that they intended to file an *amicus* brief and requested their positions on this Motion. Plaintiffs-Petitioners support the Motion, Defendant-Respondent New Mexico State Legislature takes no position on the Motion, and Intervenor/Defendant-Respondent New Mexico Chamber of Commerce opposes the Motion. The other parties did not provide their positions on the Motion.

WHEREFORE, *amici* respectfully ask this Court to grant them leave to file the conditionally filed *amici curiae* brief, attached as **Exhibit A**.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Undersigned counsel certifies that a true copy of the foregoing Motion for Leave to File Brief of *Amici Curiae* was filed electronically and served to all counsel of record this 30th day of January 2026 via the Odyssey e-filing/service system.

/s/ Kristin Greer Love
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EXHIBIT A

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BRIEF OF *AMICI CURIAE* THE AMERICAN CIVIL LIBERTIES UNION OF NEW MEXICO, THE AMERICAN CIVIL LIBERTIES UNION, AND THE BRENNAN CENTER FOR JUSTICE

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STATEMENT OF COMPLIANCE

Pursuant to Rule 12-320(D)(3) NMRA, this Amicus brief complies with the limitations set forth under Rule 12-318(F), (G) NMRA:

1. This Amicus brief was prepared using Times New Roman typeface set at a 14-point font size.
2. This Amicus brief does not exceed the thirty-five-page limitation.
3. This Amicus brief contains a total of 6,809 words.
4. The word count was obtained using Microsoft Word for Microsoft 365 MSO's word-count feature.

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INTEREST OF AMICI

The ACLU is a nationwide, non-profit, non-partisan organization dedicated to defending the civil liberties and civil rights guaranteed by the federal and state constitutions, and the ACLU of New Mexico is its New Mexico affiliate. The Brennan Center is a not-for-profit, non-partisan think tank and public interest law institute that seeks to improve our country's systems of democracy and justice.

Amici have an interest in this case because they work to advance state constitutionalism, including the independent interpretation of state constitutions by state courts. They represent clients challenging the constitutionality of state laws and actions. *See, e.g.*, Compl., *Williams v. City of Albuquerque*, D-202-CV-2022-07562 (2d Jud. Dist. Ct. Dec. 19, 2022). And they have argued for robust protections for individual rights under state constitutions across the country. *See, e.g.*, Op. & Order Granting Pls.' Mot. for Prelim. Inj., *Perkins v. State*, No. DV-25-282 (4th Jud. Dist. Ct. Mont. May 16, 2025); Br. of *Amici Curiae* the ACLU and the ACLU of Pennsylvania, *Commonwealth v. Shivers*, No. 50 EAP 2024 (Sup. Ct. Pa. Sept. 26, 2024); *ACLU of N.M. v. City of Albuquerque*, 2006-NMCA-078, 139 N.M. 761, *reh'g denied*; Br. of *Amicus-Curiae* Brennan Center for Justice in Supp. of Pl.-Appellant Robert Reeves' Appl. for Leave to Appeal, *Reeves v. Wayne Cnty.*, No. MSC 158969 (Mich. Sup. Ct. Nov. 6, 2025).

INTRODUCTION AND SUMMARY OF ARGUMENT[1]

The framers of the New Mexico Constitution created a unique regime of rights and charged the judiciary with giving it meaning. This Court, in turn, has acknowledged its responsibility to preserve the "sanctity" of New Mexico's constitutional guarantees. *State v. Gutierrez*, 1993-NMSC-062, ¶ 32, 116 N.M. 431. But that goal is not achievable when New Mexico courts focus on federal doctrines to answer questions of New Mexico constitutional law. This case affords the Court an opportunity to chart a more independent course—one that would produce faithful interpretations of the New Mexico Constitution and provide essential guidance to lower courts.

Here, the plaintiffs have alleged violations of several state constitutional provisions, some with federal constitutional analogues (the Due Process and Equal Protection Clauses) and some without (the Pollution Control and Inherent Rights Clauses). Among other things, they argue that these provisions, in combination, give rise to a fundamental right to a healthful environment that warrants heightened scrutiny. *See* Pls.-Pet'rs' Br. in Chief at 34–36. Yet, in resolving these interwoven state claims, the Court of Appeals repeatedly anchored its analysis to federal doctrine. With respect to the Due Process Clause, the Court of Appeals applied this

[1] Under Rule 12-320(C) NMRA, *amici* affirm that no person or entity beyond *amici* paid for or authored any part of this brief.

Court's "interstitial" approach, which starts with federal doctrine and turns to the New Mexico Constitution only if a New Mexico court perceives a strong enough reason to lift the federal anchor (at ¶¶ 53–54). With respect to the Pollution Control Clause, the Court of Appeals deemed it nonjusticiable partly because the court applied the federal "political question doctrine," under which federal courts leave certain issues to the political branches (at ¶¶ 47–51). And with respect to the Inherent Rights Clause, the Court of Appeals appeared to disagree that this unique feature of the New Mexico Constitution could augment the plaintiffs' other claims, suggesting instead that each of those claims must be assessed individually, as federal claims generally would be (at ¶ 55).

Thus, even though the plaintiffs sued under the New Mexico Constitution, and even though they invoked clauses unique to that document, the Court of Appeals tethered key elements of its analysis to federal doctrine. *Amici* respectfully submit that this approach weakens the sanctity of the New Mexico Constitution, and that this Court should correct it, both in this case and in future cases.

First, the Court should retire the interstitial approach and adopt an independent approach to state constitutional interpretation. An independent approach would be faithful to the New Mexico Constitution by allowing New Mexico courts to interpret its provisions independently, according to their unique features, and holistically, in accordance with their overlapping protections. It would

also be consistent with the intended role of interstitial analysis in New Mexico jurisprudence. The interstitial approach was always meant to serve as a bridge—never a destination—on the road to state constitutional independence. *See State v. Garcia*, 2009-NMSC-046, ¶ 56, 147 N.M. 134 (Bosson, J., specially concurring) (describing *State v. Gomez*, 1997-NMSC-006, 122 N.M. 777, as a "means to an end"). It allowed New Mexico courts to lean on federal precedent while developing a more robust body of independent case law on, and tools for interpreting, the New Mexico Constitution. But as explained below, the interstitial approach no longer serves the purposes initially articulated in 1997.

Second, the Court should apply this holistic, independent approach to state constitutional interpretation in this case. To do so, the Court should consider whether the Pollution Control and Inherent Rights Clauses jointly provide an enhanced constitutional right that can trigger heightened scrutiny under the state Due Process Clause or Equal Protection Clause. It should reconsider the tests it has previously imported from federal due process and equal protection law because they are not well-suited to New Mexico law, particularly given the state constitutional provisions that do not fit cleanly into the U.S. Supreme Court's narrow framework for "fundamental rights." And finally, the Court should deem the plaintiffs' claims justiciable and reject the political question doctrine altogether, as there is no good reason to import that federal doctrine into New Mexico constitutional law.

In short, *amici* urge this Court to independently interpret the New Mexico Constitution. It should do so by replacing the interstitial approach with a holistic, independent one, and by deeming the rights asserted in this case both justiciable and mutually reinforcing.

ARGUMENT

"[T]o ensure the people of New Mexico the protections promised by their constitution," this Court should retire the interstitial approach, endorse an independent and holistic approach to state constitutional interpretation, and apply that independent approach to the claims at issue here. *Grisham v. Van Soelen*, 2023-NMSC-027, ¶ 19 n.7, 539 P.3d 272.

I. This Court should adopt an independent approach to state constitutional interpretation.

To determine the New Mexico Constitution's independent meaning, this Court should adopt an independent approach to interpreting it. Under that approach, courts should begin with the New Mexico Constitution rather than the U.S. Constitution. And they should construe the New Mexico Constitution's provisions independently from federal provisions—even where those provisions may be analogous—and in light of the document as a whole. This holistic, independent mode of analysis is already grounded in this Court's case law. But, as the Court of Appeals' decision in this case demonstrates, this Court's command to interpret the New Mexico Constitution holistically is hampered by the interstitial

approach. As explained below, the interstitial approach should be retired in favor of an independent approach to state constitutional interpretation.

A. The structure of the New Mexico Constitution requires interpreting state constitutional provisions independently from federal law and in light of one another.

This Court has recognized a need to interpret the New Mexico Constitution "as a whole" rather than reading its provisions "in isolation." *State ex rel. King v. Raphaelson*, 2015-NMSC-028, ¶ 11, 356 P.3d 1096, *overruled on other grounds by State ex rel. Franchini v. Oliver*, 2022-NMSC-016, 516 P.3d 156 (quoting *In re Generic Investigation into Cable Television Servs. in State of N.M.*, 1985-NMSC-087, ¶ 13, 103 N.M. 345). And rightly so. The structure of the New Mexico Constitution—with its sweeping Bill of Rights and myriad provisions lacking federal constitutional analogues—demands a mode of analysis that accounts for its unique characteristics.

The provisions of the New Mexico Bill of Rights are not islands. They set forth broad principles that together form a "prism" through which other provisions should be viewed. *Grisham*, 2023-NMSC-027, ¶ 25. For example, the Popular Sovereignty and Right of Self-Government Clauses establish norms of democratic accountability that should inform constitutional protections housed elsewhere. N.M. Const. art. II, §§ 2, 3. Likewise, the Inherent Rights Clause—providing that "[a]ll persons are born equally free, and have certain natural, inherent, and inalienable

rights," including rights to life, liberty, property, safety, and happiness—is foundational to understanding other state constitutional protections. *Id.* § 4. Provisions such as these confirm that construing the New Mexico Constitution "as a harmonious whole" is the best way to "ascertain the intent . . . of the framers" and do justice to the document's unique composition. *Raphaelson*, 2015-NMSC-028, ¶ 11 (first quoting *Block v. Vigil–Giron,* 2004–NMSC–003, ¶ 9, 135 N.M. 24; then quoting *In re Generic Investigation*, 1985-NMSC-087, ¶ 13).

This mode of analysis is not merely theoretical. In *Grisham v. Van Soelen*, to analyze the state constitutional right to vote, this Court read New Mexico's Equal Protection Clause "together with" Sections 2, 3, and 8 of the Bill of Rights (on popular sovereignty, the right of self-government, and freedom of elections). 2023-NMSC-027, ¶¶ 25–26; *see also Morris v. Brandenburg*, 2016-NMSC-027, ¶¶ 48, 49, 51, 376 P.3d 836 (recognizing the Court's practice of viewing equal protection and due process rights through "the lens" of the Inherent Rights Clause). Other states' high courts also read state constitutional provisions jointly in a manner that enhances an underlying right.[2]

[2] For example, state high courts have found that their state constitutional commitments to providing for a public school system must be read harmoniously with—and thus are enhanced by—state equal protection clauses. *See, e.g.*, *Sheff v. O'Neill*, 678 A.2d 1267, 1280–85 (Conn. 1996); *Bd. of Educ. of Kanawha v. W. Va. Bd. of Educ.*, 639 S.E.2d 893, 899 (W. Va. 2006). Others have interpreted search-and-seizure protections in light of state constitutional privacy guarantees. *Quigg v. Slaughter*, 154 P.3d 1217, 1223 (Mont. 2007). *See generally* Robert F. Williams,

Holistic interpretation is thus consistent with both constitutional structure and common practice. Just as important, it is inconsistent with deeming any provision in the New Mexico Constitution to be presumptively identical to some provision of the U.S. Constitution. Because the provisions of the New Mexico Constitution are interrelated, none of them can be segregated from the provisions that lack federal constitutional analogues, and so none of them should be automatically equated with any provision of the U.S. Constitution. Accordingly, as the next section explains, the need to interpret the New Mexico Constitution holistically provides one reason, among many, for retiring the interstitial approach.

B. This Court should replace the interstitial approach with an independent approach.

The interstitial approach no longer serves the principles underlying this Court's constitutional jurisprudence. Not only is interstitial analysis incompatible with holistic interpretation, but the very values that motivated this Court to adopt the interstitial approach in the first place—efficiency, cogency, and federalism—would now be better served by an independent approach.

Enhanced State Constitutional Rights: Interpreting Two or More Provisions Together, 2021 Wis. L. Rev. 1001 (2001) (describing how joint interpretation often gives rise to stronger state constitutional rights).

1. Interstitial analysis unduly impedes holistic interpretation.

This Court's commitment to holistic interpretation counsels against interstitial analysis. While the interstitial approach requires courts to first consider state provisions in the federal constitutional context, holistic interpretation requires courts to interpret them in their organic state constitutional context. Given that the New Mexico Constitution contains many provisions lacking federal analogues,[3] and given this Court's recognition that the New Mexico Constitution should be interpreted as a whole, courts should not reflexively interpret any provisions—even those with federal analogues—by starting with the U.S. Constitution. Yet the interstitial approach impedes holistic analysis by directing courts to compare state provisions to federal law rather than to each other, as the Court of Appeals did in the decision below (at ¶ 37).

2. The values of efficiency, cogency, and federalism that motivated the interstitial approach would be better served by an independent approach.

This Court's adoption of the interstitial approach in *Gomez* was intended as a move toward, rather than a retreat from, state constitutional independence. *See Gomez*, 1997-NMSC-006, ¶¶ 17–20. Before *Gomez*, this Court had endorsed a

[3] *See, e.g.*, N.M. Const. art. II, § 2 (popular sovereignty); *id.* § 3 (self-government); *id.* § 4 (inherent rights); *id.* § 5 (rights under the Treaty of Guadalupe Hidalgo); *id.* § 8 (freedom of elections); *id.* § 18 (sex discrimination); *id.* § 21 (imprisonment for debt); and *id.* § 24 (victims' rights).

practice of interpreting the New Mexico Constitution in "lock-step" with the U.S. Constitution. *Id.* ¶ 16. In *Gomez*, the Court formally abandoned the lock-step approach in favor of interstitial analysis, affirming the "inherent power" of states "as separate sovereigns in our federalist system to provide *more* liberty than is mandated by the United States Constitution." *Id.* ¶ 17 (emphasis in original).

The Court explained that it was adopting the interstitial approach, as opposed to a fully independent approach, for specific reasons: efficiency, cogency, and federalism. *Id.* ¶ 21. Interstitial analysis was supposed to be efficient because it would allow New Mexico courts to consider "extensive and well-articulated" federal protections. *Id.* (quoting *Developments in the Law—The Interpretation of State Constitutional Rights*, 95 Harv. L. Rev. 1324, 1357 (1982)). It was supposed to be cogent because it would permit a "reasoned reaction to the federal view." *Id.* (same). And it was supposed to promote federalism by "preserv[ing] national uniformity in [the] development and application of fundamental rights." *Id.* (quoting *Gutierrez*, 1993-NMSC-062, ¶ 16).

Even assuming those rationales were sensible in 1997 when *Gomez* was decided, they have since been overtaken by jurisprudential developments demonstrating that the interstitial approach has outlived its usefulness. Now, with the benefit of nearly thirty years of litigation under the interstitial approach, there are ample grounds to transition to true independence.

First, interstitial analysis is increasingly inefficient. For one thing, appellate courts apply the interstitial approach inconsistently, sometimes using *Gomez* as a basis for lock-stepping, *see, e.g.*, *State v. Adame*, 2020-NMSC-015, ¶¶ 21–28, 476 P.3d 872, sometimes interpreting the state constitution independently without citing *Gomez* at all, *see, e.g.*, *Griego v. Oliver*, 2014-NMSC-003, ¶¶ 39, 53, 316 P.3d 865, and sometimes declining to apply *Gomez* because the relevant federal law is unclear, *see, e.g.*, *Grisham*, 2023-NMSC-027, ¶ 15. This variation sows confusion among lower courts and litigants about when the interstitial approach should be applied.

Further, the interstitial approach often undermines judicial economy. State courts must embark on extended forays into federal law before they can reach a litigant's state constitutional claims, even when the relevant federal law is unclear. In *State v. Garcia*, for example, the Court announced at the outset its intention to review the defendant's state constitutional claim, and it ultimately ruled for the defendant on that basis. 2009-NMSC-046, ¶ 12. But because the "interstitial approach . . . mandate[d] that [it] consider whether the [d]efendant was protected under the federal constitution," the Court first analyzed federal precedents, despite "serious uncertainty" caused by a recent "shift" in federal search and seizure law. *Id.* ¶¶ 13–15. The Court's digression into federal law could have been avoided by an independent interpretive approach. The interstitial approach also necessitates mini-appeals on the question whether litigants have done enough, within the meaning of

Gomez, to preserve their state constitutional claims. *Cf. Garcia*, 2009-NMSC-046, ¶ 56 (Bosson, J., specially concurring) (noting that *Gomez* itself "is capable of more than one meaning" as to preservation). None of this would be necessary if the Court were to transition away from the interstitial approach and subject parties asserting state constitutional rights to the same preservation rules as other litigants.

Second, the interstitial approach no longer promotes cogency. Federal case law has proven to be less certain, and more volatile, than it might have seemed in 1997. *See, e.g.*, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022) (overruling longstanding precedent on abortion); *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 19 (2022) (establishing a novel test for firearms regulations). When federal constitutional law is a moving target, it is less capable of anchoring state constitutional analysis.[4] Indeed, the interstitial approach's "utility is significantly diminished when federal precedent is unclear." *Grisham*, 2023-NMSC-027, ¶ 15.[5] Accordingly, in a recent equal protection challenge to congressional-

[4] *See State v. Barrow*, 989 N.W.2d 682, 689–90 (Minn. 2023) (noting that Minnesota's search and seizure protections may no longer be coextensive with federal law due in part to "[t]he creeping expansion of the automobile exception, illustrated by . . . Supreme Court precedents"); Elizabeth Bentley, *State Court Adherence to Decisions Incorporating Federal Constitutional Law*, 110 Iowa L. Rev. 1013, 1026 (2025) (observing that "change[s] in federal law create 'stranded' state constitutional doctrine" (quoting Jennifer Friesen, *State Constitutional Law: Litigating Individual Rights, Claims, and Defenses* § 1.06[2] & n.193 (2006))).

[5] Development of jurisprudence under the U.S. Constitution has also been hampered by the doctrine of qualified immunity. *See, e.g.*, Joanna C. Schwartz, *The*

districting maps, this Court expressly declined to apply interstitial analysis because of "uncertainty" as to the scope of the federal standard after decades of extensive U.S. Supreme Court debate. *Id.* ¶¶ 18–19. The Court reasoned that any state standard relying on the "unknown scope" of federal equal protection would be "especially uncertain," and that if federal law were to develop further, New Mexico's elections could "be thrown into chaos and confusion." *Id.* ¶ 19.

Meanwhile, there is less need today for this Court to tie its constitutional analysis to federal law because New Mexico constitutional law is increasingly well-developed. *See Montoya v. Ulibarri*, 2007-NMSC-035, ¶ 22, 142 N.M. 89 (noting the "many instances" in which this Court has interpreted the New Mexico Constitution as providing greater rights than the federal constitution, and collecting cases). To the extent gaps remain, the interstitial approach appears partly to blame. Appellate courts interpreting the New Mexico Constitution often lock-step with federal precedent that provides weak protection, in line with *Gomez*'s presumption

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Case Against Qualified Immunity, 93 Notre Dame L. Rev. 1797, 1815–18 (2018). The defense of qualified immunity involves a two-prong test, the first addressing whether a constitutional right has been violated, the second mandating dismissal if the asserted right was not "clearly established" at the time of the alleged violation. *Id.* at 1815. The U.S. Supreme Court has authorized lower courts to resolve cases by addressing the second prong first, and thus never ruling on whether a constitutional violation has occurred. *Pearson v. Callahan*, 555 U.S. 223, 236–37 (2009).

in favor of following federal law.[6] And of course, when federal law does provide protection, interstitial analysis prevents courts from considering the New Mexico Constitution at all. *See, e.g.*, *State v. Davis*, 2015-NMSC-034, ¶ 53, 360 P.3d 1161.

Third, the interstitial approach undermines rather than promotes federalism. The *Gomez* Court adopted the interstitial approach based in part on the view that it would helpfully promote national uniformity in constitutional law. Since then, however, state high courts have increasingly concluded that national uniformity across federal and state courts is undesirable. Instead, they have recognized that, as contemplated by the framers of the U.S. Constitution, state courts can best advance federalism principles by declining to mirror federal law.[7]

Indeed, state courts have a "constitutional duty," *Gutierrez*, 1993-NMSC-062, ¶ 16, to provide what James Madison called a "double security" for liberty. *State ex*

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[6] *See, e.g.*, *Adame*, 2020-NMSC-015, ¶¶ 21–28 (reviewing state subpoenas of personal banking records); *Morris*, 2016-NMSC-027, ¶ 51 (reviewing physician aid in dying ban in line with federal equal protection, while acknowledging that New Mexico's inherent rights guarantee "may . . . ultimately be a source of greater due process protections than those provided under federal law"); *Elane Photography, LLC v. Willock*, 2012-NMCA-086, ¶¶ 32–33, 284 P.3d 428 (reviewing constitutionality of New Mexico Human Rights Act as applied to refusal to photograph same-sex wedding), *aff'd*, 2013-NMSC-040, 309 P.3d 53; *City of Albuquerque v. Pangaea Cinema LLC*, 2012-NMCA-075, ¶¶ 19–20, 284 P.3d 1090 (reviewing zoning ordinance regulating adult entertainment), *rev'd sub nom. State v. Pangaea Cinema LLC*, 2013-NMSC-044, 310 P.3d 604.

[7] *See State v. Wilson*, 543 P.3d 440, 446 (Haw. 2024); *State v. Athayde*, 2022 ME 41, ¶ 21, 277 A.3d 387, 394–95; *People v. Tanner*, 853 N.W.2d 653, 666 n.15 (Mich. 2014); *State v. Short*, 851 N.W.2d 474, 481–82 (Iowa 2014).

rel. Cincinnati Enquirer v. Bloom, 177 Ohio St.3d 174, ¶ 19, 2024-Ohio-5029, 251 N.E.3d 79 (quoting James Madison, *The Federalist No. 51*, at 323 (Clinton Rossiter ed. 1961)). While "[f]ederalism considerations may lead the U.S. Supreme Court to underenforce (or at least not to overenforce) constitutional guarantees," state courts need not "apply a 'federalism discount.'" Jeffrey S. Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law* 175 (2018). Instead, they can tailor state constitutional rights to state circumstances. This double security for individual rights becomes especially vital when, as now, federal law is in flux. "Real federalism means that state constitutions are not mere shadows cast by their federal counterparts, always subject to change at the hand of a federal court's new interpretation of the federal constitution." *Olevik v. State*, 806 S.E.2d 505, 513 n.3 (Ga. 2017).

In service of effective federalism, this Court should replace the interstitial approach with one that provides independent, stable protection for individual rights.

C. If this Court adopts an independent approach, it should provide guidance to lower courts and litigants on the process for interpreting the New Mexico Constitution.

Applying an independent approach means interpreting the New Mexico Constitution by New Mexican lights. But the devil is in the details. Here, *amici* suggest a process state courts should follow, including in this case, when reviewing claims under the New Mexico Constitution.

1. New Mexico courts should analyze the New Mexico Constitution without automatic reference to federal constitutional law.

When litigants bring New Mexico state constitutional claims, New Mexico courts should analyze the New Mexico Constitution first, without automatic reference to federal constitutional law. This state-centric process—sometimes called "primacy"—better reflects the fact that state constitutions are the "primary" protectors of individual rights, not mere gap-fillers. *State v. Larrivee*, 479 A.2d 347, 349 (Me. 1984). Several high courts already employ this process, which has helped them further develop their own modes of constitutional analysis. *See, e.g.*, *Traylor v. State*, 596 So.2d 957, 962 (Fla. 1992); *Wilson*, 543 P.3d at 445 (Hawai‘i); *Athayde*, 2022 ME 41, ¶¶ 20–21; *State v. Beauchesne*, 868 A.2d 972, 975–76 (N.H. 2005); *State v. Moore*, 390 P.3d 1010, 1014 (Or. 2017) (en banc); *Matter of Williams*, 496 P.3d 289, 296 (Wash. 2021) (en banc).

The state-centric process has several advantages. It promotes the development of state constitutional law, ensuring that a robust, reliable layer of protection for individual rights at the state level can withstand sea changes in federal constitutional law. *Cf. Sitz v. Dep't of State Police*, 506 N.W.2d 209, 218 (Mich. 1993) ("[O]ur courts are not obligated to accept what we deem to be a major contraction of citizen protections under our constitution simply because the United States Supreme Court has chosen to do so."). It also promotes respect for federal law by enabling state courts to "avoid issuing unnecessary opinions on the United States Constitution,"

Athayde, 2022 ME 41, ¶ 21, since a New Mexico court may have no need to opine on federal law if the state constitution resolves the case. *See State v. Cadman*, 476 A.2d 1148, 1150 (Me. 1984) (characterizing this as a "policy of judicial restraint"); *cf. Avoidance of Federal Constitutional Questions – When Abstention Required*, 17A Fed. Prac. & Proc. Juris. § 4242 (3d ed.) (describing the parallel federal abstention doctrine whereby "a federal court may, and ordinarily should, refrain from deciding a case . . . if there are unsettled questions of state law that may be dispositive").

Analyzing the state constitution without reflexive reference to federal jurisprudence therefore serves two federalism values: state constitutional development and judicial restraint.

2. In analyzing the New Mexico Constitution, New Mexico courts should look primarily to New Mexico sources.

On substance, this Court's analysis should focus on New Mexico sources, such as (a) state constitutional text, structure, and history, (b) preexisting and developing state law, and (c) contemporary state experience and values.

Each of these factors already has a strong foundation in this Court's precedents, as described below, as well as in the jurisprudence of other states.[8]

[8] *See, e.g.*, *Traylor*, 496 So.2d at 962 (setting forth factors "that inhere in [Florida's] own unique state experience, such as the express language of the constitutional provision, its formative history, both preexisting and developing state law, evolving customs, traditions and attitudes within the state, the state's own general history, and finally any external influences that may have shaped state law"); *Dupuis v. Roman Catholic Bishop of Portland*, 2025 ME 6, ¶ 11 n.8, 331 A.3d 294

Together, they would help the Court "give vitality" to the New Mexico Constitution. *Gutierrez*, 1993-NMSC-062, ¶ 55; *see also State v. Misch*, 2021 VT 10, ¶ 9, 214 Vt. 309, 256 A.3d 519 (aiming to "discover and protect the core value that gave life to a constitutional provision, and to give meaning to the text in light of contemporary experience").

(a) Text, structure, and history. The Court closely examines the text and structure of the New Mexico Constitution to interpret provisions new and old. *See, e.g.*, *N.M. Right to Choose/NARAL v. Johnson*, 1999-NMSC-005, ¶¶ 29–30, 126 N.M. 788 (analyzing the text of the Equal Rights Amendment); *Grisham*, 2023-NMSC-027, ¶ 26 (reading "Article II, Section 18 together with Sections 2, 3, and 8 to evaluate an individual's right to vote under the New Mexico Constitution"). In addition, the Court looks to New Mexico constitutional history to contextualize specific provisions, considering both the history of their formation and the broader historical "milieu" from which they emerged. *Gutierrez*, 1993-NMSC-062, ¶ 34–43.

("[W]e first examine our own precedent; our own common law; our own statutes and values; and our own sociological and economic context."); *State v. Misch*, 2021 VT 10, ¶ 9 ("[W]e begin with the text of the provision, understood in its historical context, and we consider our own case law, the construction of similar provisions in other state constitutions, and empirical evidence if relevant."); *Commonwealth v. Molina*, 104 A.3d 430, 441 (Pa. 2014) ("[T]he Court should consider: the text of the relevant Pennsylvania Constitutional provision; its history, including Pennsylvania case law; policy considerations, including unique issues of state and local concern and the impact on Pennsylvania jurisprudence; and relevant cases, if any, from other jurisdictions.").

(b) Preexisting and developing state law. Crucially, the Court also looks to New Mexico's distinctive state characteristics beyond the state constitution itself. For example, the Court has looked to preexisting and developing New Mexico law to determine the scope of state constitutional provisions, from early common law to statutes on the books today. *See, e.g.*, *NARAL*, 1999-NMSC-005, ¶ 34 (considering the "common-law view" of women in determining that strict scrutiny should apply to gender classifications); *Griego*, 2014-NMSC-003, ¶ 42 (canvassing New Mexico legislation offering protection based on sexual orientation); *State v. Martinez*, 2021-NMSC-002, ¶ 67, 478 P.3d 880 (describing New Mexico's Accurate Eyewitness Identification Act as part of trend toward addressing problems with eyewitness-identification evidence).

(c) Contemporary state experience and values. Last but not least, the Court should consider "the New Mexico experience" in independently interpreting the state constitution. *State v. Cordova*, 1989-NMSC-083, ¶ 15, 109 N.M. 211. The Court has invoked this experience as a reason to diverge from federal law, *id.*, both as to the practical effects of legal rules and as to empirical realities on the ground, *see Gomez*, 1997-NMSC-006, ¶ 20 (citing *State v. Sutton*, 1991-NMCA-073, ¶ 24, 112 N.M. 449 (describing courts' attention to the effects of a particular probable-cause test and the size of rural lots)). This makes sense, given that New Mexico courts are "better acquainted" than federal courts with "the problems and traditions

of [the] state." *Cordova*, 1989-NMSC-083, ¶ 16 n.8. In line with that expertise, this Court has emphasized New Mexico's culture in its analysis, looking to state values to determine the meaning of the state constitution today. *See, e.g.*, *NARAL*, 1999-NMSC-005, ¶ 31 (describing the "evolving concept of gender equality in this state"); *Breen v. Carlsbad Mun. Schs.*, 2005-NMSC-028, ¶ 27, 138 N.M. 331 (noting that "New Mexico has continually shown a concern for protecting the mentally disabled").

In analyzing state claims, this Court often consults the law of other states, as well as federal precedents. *See, e.g.*, *Martinez*, 2021-NMSC-002, ¶¶ 57–65 (canvassing departures from the federal test for admitting eyewitness identifications); *Garcia*, 2009-NMSC-046, ¶ 33 (collecting state cases departing from the federal seizure test); *Gutierrez*, 1993-NMSC-062, ¶ 16 (recognizing the value of "guidance" from federal and state precedents, as well as the common law, insofar as they are "persuasive"). The approach proposed here is consistent with that practice. But the Court should place federal precedents on the same plane as other states' precedents, giving them weight "only to the extent [they are] persuasive." *Breen*, 2005-NMSC-028, ¶ 18; *see also Athayde*, 2022 ME 41, ¶ 20 (giving federal precedents "weight similar to the weight we might give to interpretations of analogous provisions in other states' constitutions").

The proposed approach is also consistent with this Court's practice of holistic interpretation. If this Court adopts an independent approach, it should reaffirm its commitment to, and provide additional guidance on, interpreting the New Mexico Constitution as a harmonious whole. Whereas interstitial analysis presses courts to interpret state constitutional provisions as federal courts might interpret them—one by one, not in the aggregate, *see, e.g.*, *Dobbs*, 597 U.S. at 235–37 (criticizing hybrid theories of the abortion right)—independent analysis demands attention to the unique composition of the entire state constitution and respect for the independent meaning of provisions read in their proper context.

II. The Court should interpret the state constitutional provisions in this case jointly and should not analyze the plaintiffs' claims in lockstep with federal doctrine.

In this case, the plaintiffs have alleged violations of the New Mexico Constitution's Pollution Control, Inherent Rights, Due Process, and Equal Protection Clauses. *Amici* urge the Court to take this opportunity to interpret the New Mexico Constitution in a holistic rather than piecemeal fashion, and in doing so, to replace the interstitial approach with an independent one.

The Court of Appeals' conformity to federal jurisprudence underscores the need for change. Three aspects of its analysis are particularly ill-suited to New Mexico constitutional law: (a) its atomistic interpretation of state constitutional

provisions, (b) its reliance on due process and equal protection doctrines modeled on federal law, and (c) its application of federal political question doctrine.

A. The Court should read New Mexico's Pollution Control, Inherent Rights, Due Process, and Equal Protection Clauses together to determine whether the asserted rights are protected.

Rather than interpreting the Pollution Control Clause and the Inherent Rights Clause jointly, the Court of Appeals gave them separate and, consequently, unduly narrow treatment. Specifically, it determined that the Pollution Control Clause permits pollution and the Inherent Rights Clause provides no substantive rights (at ¶ 55). As a result, the Court of Appeals rejected the plaintiffs' contention that the Pollution Control Clause and the Inherent Rights Clause should together trigger heightened scrutiny under the Due Process Clause (at ¶¶ 55–57).[9]

But this Court has made clear that multiple provisions may in combination give rise to a strong constitutional right. And indeed, although the Court of Appeals relied on *Morris v. Brandenburg* in rejecting the plaintiffs' inherent rights arguments (at ¶ 55), *Morris* merely held that the Inherent Rights Clause "has never been interpreted to be the *exclusive* source for a fundamental or important constitutional right, and *on its own* has always been subject to reasonable regulation." *Morris*, 2016-NMSC-027, ¶ 51 (emphasis added). This statement leaves open the possibility

[9] The Court of Appeals rejected the plaintiffs' equal protection arguments on other grounds (at ¶ 61).

that the Inherent Rights Clause provides, or at least augments, substantive rights when interpreted jointly with another provision.

Such holistic analysis is appropriate in this case. The Court has already recognized the relationship between the Inherent Rights, Due Process, and Equal Protection Clauses. *See Morris*, 2016-NMSC-027, ¶ 51 ("Article II, Section 4 should inform our understanding of New Mexico's equal protection guarantee, and may also ultimately be a source of greater due process protections than those provided under federal law. . . ." (first citing *Griego*, 2014-NMSC-003, ¶¶ 1, 3; then citing *Cal. First Bank v. State of N.M. Dep't of Alcohol Beverage Control*, 1990-NMSC-106, ¶ 44, 111 N.M. 64)). Here, the Court should reaffirm that relationship and clarify that the Pollution Control Clause, too, factors into the analysis. Properly construed, the Inherent Rights Clause and the Pollution Control Clause augment one another, and the emergent rights can be enforced via the state Due Process Clause or Equal Protection Clause, as well as under the Pollution Control Clause itself.

The textual resonances between the Pollution Control Clause and the Inherent Rights Clause support such joint interpretation. The Pollution Control Clause declares "[t]he protection of the state's beautiful and healthful environment" to be "of fundamental importance to the public interest, health, safety and the general welfare." N.M. Const. art. XX, § 21. The Inherent Rights Clause provides that "[a]ll persons are born equally free, and have certain natural, inherent and inalienable

rights, among which are the rights of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of seeking and obtaining safety and happiness." N.M. Const. art. II, § 4. Both provisions expressly refer to "safety," and they invoke the related concepts of "welfare" and "happiness," "health" and "life." While the Inherent Rights Clause is broader than the Pollution Control Clause, they overlap, and the meaning of one should inform the meaning of the other. The fact that the right to a beautiful and healthful environment is "fundamental" to the general welfare should inform the evolving meaning of "life," "liberty," "safety," and "happiness." And the fact that the rights enumerated in the Inherent Rights Clause are "natural, inherent, and inalienable" only strengthens the environment rights described as "fundamental" to "the public interest, health, safety and the general welfare."

Together, then, the Pollution Control Clause and the Inherent Rights Clause arguably give rise to a right to a "beautiful and healthful environment" that is not only of "fundamental importance," but that is also inextricably linked to the "inalienable" rights of all New Mexicans.

B. The Court should not rely on federal doctrines to determine the proper tests for substantive due process and equal protection violations under the New Mexico Constitution.

The Court of Appeals opinion below also reveals two distinct shortcomings of New Mexico's due process and equal protection doctrines, which are largely

modeled on federal jurisprudence. First, interpreting state provisions in isolation prevents courts from recognizing state constitutional rights that should trigger heightened scrutiny. Second, the interstitial approach has led courts to employ federal tests ill-suited to New Mexico's unique and evolving constitution.

Under state law, as under federal law, infringements on certain rights can trigger heightened scrutiny. Under New Mexico's Due Process Clause, a state action that "shocks the conscience or interferes with rights implicit in the concept of ordered liberty"—that is, fundamental rights—is subject to strict scrutiny. *Wagner v. AGW Consultants*, 2005-NMSC-016, ¶¶ 30, 12, 137 N.M. 734 (internal quotation marks omitted) (quoting *State v. Rotherham*, 1996-NMSC-048, ¶ 39, 122 N.M. 246); *see ACLU of N.M.*, 2006-NMCA-078, ¶ 16. This test is derived from the U.S. Supreme Court's articulation of the federal standard in *United States v. Salerno*, 481 U.S. 739, 746 (1987), which itself is now becoming outdated, *see Dobbs*, 597 U.S. at 231. Even if that framework were appropriate here, the Court of Appeals erred in holding that the Pollution Control and Inherent Rights Clauses do not together give rise to a fundamental right. At the very least, this Court should make clear that a right that is *expressly deemed fundamental* and that overlaps with the expansive Inherent Rights Clause—like the right asserted here—triggers strict scrutiny for purposes of state substantive due process.

Similarly, for purposes of state equal protection, this Court has held that an important or fundamental right can trigger heightened scrutiny. *Wagner*, 2005-NMSC-016, ¶ 12. If this Court finds the state Equal Protection Clause applicable here, it should apply strict scrutiny because the burdened right, arising from both the Pollution Control Clause and the Inherent Rights Clause, is fundamental.

In addition to identifying the asserted right as fundamental, this Court should reevaluate its broader approach to state substantive due process and equal protection. New Mexico's federally-derived frameworks unduly restrict state courts in enforcing the New Mexico Constitution's unique combination of protections. For example, the substantive due process test imported from federal law, described above, may prevent state courts from enforcing fundamental state constitutional rights, including new rights established via amendment. Violations of fundamental rights may not be intuitively shocking, and such rights may not be implicit in the concept of ordered liberty, but they may nonetheless be constitutionally significant enough to warrant this Court's most exacting scrutiny.[10] Here, even if the Court of Appeals had correctly held that the plaintiffs asserted an enforceable state

[10] Plaintiffs argue that they can meet the standard of deliberate indifference, derived from federal Eighth Amendment jurisprudence. Pls.-Pet'rs' Br. in Chief at 44–46. This federal doctrine, which requires inquiry into the subjective state of mind of individuals sued under Section 1983, should not be adopted by New Mexico courts in interpreting the New Mexico Constitution.

constitutional right, this Court's lock-step interpretation of substantive due process might have forestalled the application of heightened scrutiny.

Likewise, this Court has largely modeled its equal protection tests on the federal framework. To be sure, it has diverged in important ways: the Court has stated that New Mexico's Equal Protection Clause demands a "more robust" form of rational-basis review,[11] protects additional classes and rights, and potentially allows disparate-impact theories. *See Rodriguez v. Brand W. Dairy*, 2016-NMSC-029, ¶¶ 27, 13–15, 25, 29, 378 P.3d 13 (on rational-basis review); *Trujillo v. City of Albuquerque*, 1998-NMSC-031, ¶¶ 30–32, 125 N.M. 721 (same); *Griego*, 2014-NMSC-003, ¶¶ 39, 53 (on sensitive classes); *Breen*, 2005-NMSC-028, ¶ 28; *Wagner*, 2005-NMSC-016, ¶¶ 12, 22 (on important rights and disparate effects). Still, as in the due process context, this federally-derived framework is unduly limiting.

C. The Court should decline to adopt any doctrine akin to the federal political question doctrine.

The independent approach to state constitutional interpretation extends beyond the analysis of individual constitutional rights. It also counsels against lock-stepping with federal doctrines that govern other constitutionally significant issues, including justiciability.

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[11] Other high courts have adopted similar tests. *See, e.g.*, *Racing Ass'n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1, 7–8 (Iowa 2004); *Baker v. State*, 170 Vt. 194, 203-204, 744 A.2d 864 (1999); *Balboni v. Ranger Am. of the V.I., Inc.*, 2019 V.I. 17, 19–20; *Calloway Cnty. Sheriff's Dep't v. Woodall*, 607 S.W.3d 557, 564 (Ky. 2020).

By its own terms, the federal political question doctrine applies only to federal courts. *See Rucho v. Common Cause*, 588 U.S. 684, 695-96 (2019). Even so, in determining that the plaintiffs' Pollution Control Clause claims were nonjusticiable, the Court of Appeals agreed with the defendants that the doctrine "urges dismissal" (at ¶ 45) and applied the federal framework in its entirety (¶¶ 47–51). As part of that analysis, the Court of Appeals concluded that the Pollution Control Clause was judicially uninterpretable (at ¶ 48–49). But paradoxically, it then interpreted the Clause as "impliedly" permitting pollution (at ¶¶ 55–56)—demonstrating that the Clause is, in fact, readily interpretable by courts.

As the law professors' amicus brief explains, there is no good reason for this Court to import federal justiciability rules into New Mexico law. And there are many reasons not to. In rejecting the U.S. Supreme Court's application of the political question doctrine to partisan gerrymandering, this Court declared that it would "leave no power on the table in properly fulfilling our constitutional obligations." *Grisham*, 2023-NMSC-027, ¶ 39. It is, after all, "the responsibility of the courts to interpret and apply the protections of the Constitution"—a responsibility closely connected to their duty to interpret the state constitution independently. *Id.* (quoting *Griego*, 2014-NMSC-002, ¶ 1). This Court should not abdicate its duty to interpret and enforce the Pollution Control Clause or any other state constitutional provision.

CONCLUSION

Amici respectfully urge the Court to interpret the state constitutional provisions at issue in this case jointly and without automatic reference to federal law. Consistent with that mode of analysis, the Court should formally replace the interstitial approach with an independent approach to state constitutional interpretation rooted in New Mexico law, history, and values.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Undersigned counsel certifies that a true copy of the foregoing Brief of *Amici Curiae* the American Civil Liberties Union of New Mexico, the American Civil Liberties Union, and the Brennan Center for Justice was filed electronically and served to all counsel of record this 30th day of January 2026 via the Odyssey e-filing/service system.

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